S774/815

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Remarks:

Please review these proposed comments on S. 774 and S. 815 and send us your views by 21 May. Thank you.

STATINTL

Office of Legislative Counsel

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FROM: NAME, ADDRESS AND PHONE NO.	DATE
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FORM NO. 1-67 237 Use previous editions (40)

STAT

DRAFT: DFM: cg (6 May 75)

Honorable Abraham Ribicoff, Chairman
Committee on Government Operations
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for comments on S. 774 and S. 815, bills designed to regulate lobbying in connection with Congressional and Executive action. This Agency, of course, defers to Congress on matters concerning lobbying directed at Congress. With respect to the regulation of lobbying directed at the Executive branch, our interest is limited to the concern that overbreadth of language will inhibit this Agency's foreign intelligence gathering mission.

S. 815 would require individuals who regularly attempt to influence the "policy-making process" of the Executive branch to register with the Federal Election Commission, record their contacts with Executive branch officials, and file quarterly reports on these contacts with the Commission. Section 3(b) defines "policy-making process" as "any action taken by an Executive employee with respect to any pending or proposed rule, adjudication, hearing, investigation, or other action in the Executive branch." The examples of rules and adjudications cited in the definition suggest an intent to limit the bill to administrative and regulatory actions. Under the doctrine of ejusdem generis, the term "other action," also cited in the definition of "policy-making process," would be confined to the same kinds of public interest matters enumerated, e.g., rules and adjudication.

The Central Intelligence Agency was established by the National Security Act of 1947 to provide policy-makers with information on foreign areas and developments. It is not a policy-making agency; though supplying U. S. policy-makers with intelligence assessments, it does not formulate or advocate

policy-making process is intended to apply strictly to influencing the administrative and regulatory functions within the Executive branch, the Central Intelligence Agency would have no direct interest in such regulation.

It is possible, however, that a broader interpretation would be given section 3(b) to cover the influencing of "any action" taken by an Executive employee. If this were the case, situations might arise in which the proposed regulations would conflict with this Agency's statutory charter. For example, it is possible that, in the context of competitive bidding between cleared private companies on a sensitive Agency project, officials of a private company would seek to persuade the Agency to adopt a particular view. Under sections 4(a)4 and 6(c), (d), (e), (f), (h), (i), the communicating official would be required to disclose the identities of Agency personnel and the subject matter of the communication. This would involve the disclosure of classified information and would directly conflict with the statutory authorities which charge the Director of Central Intelligence with the protection of Intelligence Sources and Methods (50 U.S.C. 403) and which exempt CIA from laws requiring disclosure of Agency organization and personnel (50 U.S.C. 403(g)).

These comments also apply to section 2(2) of S. 774, which defines policy-making process as "any action taken ... with respect to any rule, adjudication, or other policy matter in the executive branch." The words "other policy matter" could be broadly construed to raise the same problems discussed above. If it is the intent of the Committee that the bill be given the broader of the two interpretations, then I must oppose these two bills, or alternatively, request that CIA be granted an exemption. If the narrower interpretation is desired, I would merely suggest that the scope of the bill be more clearly defined.

Because of its broader coverage, section 7 of S. 774 raises more serious problems. S. 815 has no comparable provision. Under section 7, certain Executive branch employees would be required to record each oral or written communication received from "outside parties expressing an opinion or containing information" with respect to the policy-making process. These records, available for public inspection, would contain the identities of the contacted employee and the outside party, the subject matter of the communication, and the action taken in response to the communications.

It is noted that this section uses the undefined term "outside party" in lieu of the term "lobbyist" used elsewhere in the bill and defined in section 2(1). Also, the phrase "communication ... expressing an opinion or containing information" is used rather than the term "lobbying" defined in section 2(9) as communication made to influence the policy-making process. This shift in language and the potentially broad interpretation of "policy-making process" would extend the requirements of section 7 to communications not generally considered lobbying activities. Such overbroad coverage would seriously impair this Agency's ability to function. The requirement that the opinions or information of any outsider concerning "policy matters" be made public would make impossible the essential confidentiality that this Agency's outside sources of information must enjoy. Where sensitive matters are involved, this requirement would block CIA's access to outside judgments and viewpoints--such as those which a Congressman, academician, former government official, or foreign intelligence service might offer. I urge that section 7 of S. 774, if adopted, be strictly limited to traditional lobbying activities by lobbyists, as defined in section 2(10) of the bill.

Sincerely,